

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

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|----------------------------------|---|---------------------------|
| JEFFREY A. GROGAN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No.: 08-CV-50120 |
| v. |) | |
| |) | Judge: PHILIP G. REINHARD |
| SCHOOL DISTRICT #205 - ROCKFORD, |) | |
| |) | |
| Defendant. |) | |

DEFENDANT’S MOTION TO DISMISS COUNT III
OF PLAINTIFF’S COMPLAINT

NOW COMES the Defendant, the ROCKFORD BOARD OF EDUCATION SCHOOL DISTRICT NO. 205, WINNEBAGO-BOONE COUNTIES, ILLINOIS (incorrectly identified as “School District #205 – Rockford”, and hereinafter “Defendant” and/or “Board”), by and through its attorneys, HINSHAW & CULBERTSON LLP, hereby moving to dismiss Count III of Plaintiff’s Complaint with prejudice pursuant to 12(b)(6) of the Federal Rules of Civil Procedure.

1. Plaintiff filed a three-count Complaint alleging (1) at Count I, sex discrimination in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et seq.); (2) at Count II, retaliation in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et seq.); and, (3) at Count III, violation of the Illinois Civil Rights Act of 2003 (ICRA) (740 ILCS 23/1 et seq.).

2. Plaintiff’s State law claim at Count III is based entirely on the set of facts he relies on for his allegations of sex discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. (Plaintiff’s Complaint, ¶¶ 47-51).

3. The Board’s Motion to Dismiss Count III should be granted inasmuch as Plaintiff failed to state a claim for which relief may be granted. Moreover, the Illinois Human Rights Act

(IHRA) (775 ILCS 5/1-101 et seq.) preempts Plaintiff's State law employment discrimination claim.

4. The IHRA provides redress for the allegations of gender discrimination raised in Plaintiff's Complaint. See 775 ILCS 5/1-102.

5. The law is clear that where the IHRA provides redress for a claim, the IHRA is the exclusive remedy for employment discrimination claims. *Baker v. Miller*, 159 Ill.2d 249, 256 (Ill. 1994).

6. Inasmuch as the IHRA provides redress for the gender discrimination claim raised in Count III of Plaintiff's Complaint, the IHRA preempts Count III of Plaintiff's Complaint. *Damato v. Jack Phelan Chevrolet Geo, Inc.*, 927 F.Supp. 283, 292 (N.D.Ill. 1996).

7. In the alternative, the Defendant moves to strike Plaintiff's prayer for punitive damages.

8. In Count III of Plaintiff's Complaint, he includes a prayer for "punitive damages available under Section 5(a)(1) of the IRCP [sic]".

9. Contrary to Plaintiff's assertion, punitive damages are not permitted under the ICRA and, therefore, Plaintiff's prayer for punitive damages should be stricken.

WHEREFORE, for the reasons stated herein and the accompanying Memorandum of Law in Support of Its Motion, the Defendant, ROCKFORD BOARD OF EDUCATION SCHOOL DISTRICT NO. 205, WINNEBAGO-BOONE COUNTIES, ILLINOIS, moves for an Order of this Court dismissing Count III of Plaintiff's Complaint with prejudice, or in the alternative, for an Order striking Plaintiff's prayer for punitive damages, and for such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

By: s/Lori L. Hoadley

Lori L. Hoadley

Lori L. Hoadley
Jonathon D. Hoag
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

AFFIDAVIT OF SERVICE

The undersigned certifies that on August 22, 2008, a copy of the foregoing Defendant's Motion to Dismiss Count III of Plaintiff's Complaint was electronically served via the U.S. District Court CM/ECF E-Filing System upon the following:

Grogan v. Rockford School District #205

For Plaintiff:
John C. Ireland, Esq.
1921 Charles Lane
Aurora, IL 60505

s/ Rhonda Walker_____

Firm No. 695
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
Phone 815.490.4900
Fax 815.490.4901